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Elizabeth A. Brown
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IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,

Appellant,

vs.

AMERICAN BROADCASTING
COMPANIES, INC.; THE ASSOCIATED
PRESS; CABLE NEWS NETWORK, INC.;
CHESAPEAKE MEDIA I, LLC, D/B/A
KSNV-TV; LOS ANGELES TIMES
COMMUNICATIONS, LLC; THE NEW
YORK TIMES COMPANY; SCRIPPS
BROADCASTING HOLDINGS LLC
D/B/A KTNV-TV; WP COMPANY LLC
D/B/A THE WASHINGTON POST AND
LAS VEGAS REVIEW-JOURNAL,

Respondents.

Case No.: 75518

**APPELLANT'S REPLY IN
SUPPORT OF ITS MOTION TO
STRIKE RESPONDENTS'
APPENDICES AND MOTION
TO STAY BRIEFING**

Appeal from the Eighth Judicial
District Court, the Honorable
Stefany Miley Presiding.

MAC:14687-102 3612839_1

I. INTRODUCTION

The Las Vegas Metropolitan Police Department (“LVMPD”) moved this Court to strike the Respondents’ appendices because they are not properly part of the record on appeal. Respondents argue that such documents are judicially noticeable and are necessary to rebut LVMPD’s arguments. These arguments fail. First, this Court will only take judicial notice of documents if there is a valid reason. Respondents did not articulate any reason why the documents submitted in the Writ Proceeding should be considered. Second, LVMPD’s arguments are issues of law and statutory construction, making the additional appendices irrelevant. Finally, the Court should also stay briefing and allow LVMPD a 30-day extension of time from the date of this Court’s order resolving the motion to strike.

II. LEGAL ARGUMENT

A. NO EXCEPTION EXISTS FOR THIS COURT TO TAKE JUDICIAL NOTICE OF THE RESPONDENTS’ APPENDICES

As a general rule, the Court will not take judicial notice of records in another and different case, even though the cases are connected. *Mack v. Estate of Mack*, 125 Nev. 80, 91, 206 P.3d 98, 106 (2009) (citations omitted). However, under some circumstances, the Court may invoke judicial notice to take cognizance of the record in another case. *Id.* To determine if a particular circumstance falls within the exception, the Court must examine the closeness of the relationship between the two cases. *Id.* at 91–92. Only when a *valid reason exists*, has the Court taken

judicial notice of other state court and administrative proceedings. *Id.* (emphasis added).

The Respondents argue that the documents within their respective appendices should be judicially noticed by this Court. The main point of the Respondents' argument is that these documents were submitted to this Court in another matter, LVMPD's Petition for Writ of Mandamus, or Alternatively a Writ of Prohibition, Supreme Court Case No. 76023 ("Writ Proceeding"). While the Writ Proceeding concerned the same case, the central issue presented addressed the District Court's jurisdiction in making a ruling given the instant appeal. The Respondents have failed to articulate a valid reason for this Court to rely on the documents submitted in the Writ Proceeding. *See In re Amerco Derivative Litig.*, 127 Nev. at 221 n.9, 252 P.3d at 699 n.9 ("[G]enerally, this court will not take judicial notice of facts in a different case, even if connected in some way, unless the party seeking such notice demonstrates a valid reason for doing so.") (emphasis added and citations omitted). Because the issues presented in the Writ Proceeding are of no relevance to the appeal, other than the general subject matter, the appendices submitted by the Respondents should be stricken.

B. THE APPENDICES DO NOT ASSIST THIS COURT WITH THE RESPONDENTS' ARGUMENTS.

The Media contends that the additional documents in the appendices are necessary to rebut LVMPD's arguments that it is entitled to extraordinary use fees

pursuant to NRS 239.055. First, LVMPD's argument is based on statutory interpretation and construction, which is an issue of law. It is the Media's position that LVMPD is not entitled to extraordinary use fees because it failed to comply with the District Court's Order. It appears that the Media is relying on the Writ Proceeding as a basis for its position, nothing in the Writ Proceeding, let alone the District Court's order, dealt with LVMPD's failure to comply with the Disclosure and Cost Order, currently being appealed. Furthermore, the District Court failed to ever make such a finding. Thus, the Media's argument that LVMPD is not entitled to costs because it failed to comply with the order is premature because that issue was never presented to the District Court.

Similarly, LVRJ claims that its appendices are necessary to its mootness argument in its Answering Brief. Ironically, LVRJ does not include one citation to its appendices in its mootness argument. *See* Answering Brief/Opening Brief ("AB") at pp. 23–30. LVRJ's mootness argument is centered on two issues: (1) the availability of the Body Worn Camera ("BWC") footage; and (2) the alleged failure to provide cost estimates. *Id.* Even in the facts section of LVRJ's brief, it only relies on a total of 8 pages in relation to these arguments. *See* AB at pp. 19–20 (citing 1 RA 24–25; 88–90; 162–163; and 165). Furthermore, as discussed above, LVMPD's argument concerning the production of BWC footage is one of statutory interpretation, which does not require additional facts or documents.

C. THE APPENDICES INCLUDE DOCUMENTS PRESENTED IN POST-JUDGMENT PROCEEDINGS.

Despite LVRJ's attempt to distinguish the authority cited by LVMPD in its motion, *Arnold v. Kip* is directly on point and requires this Court to strike the appendices. In *Arnold*, the Court was presented with the issue of whether an argument made for the first time in a motion for reconsideration was properly before the Court. *Arnold v. Kip*, 123 Nev. 410, 416–417, 168 P.3d 1050, 1054 (2007). The Court determined that it may consider the argument because the denial of the motion for reconsideration was entered before the notice of appeal was entered, rendering it properly part of the record on appeal. *Id. see also Rico v. Rodriguez*, 121 Nev. 695, n.1, 120 P.3d 812 (2005) (“Ordinarily, an order denying a motion for reconsideration is not substantively appealable. . . . Nevertheless, as the order denying reconsideration was entered before the appeal was taken, we may consider the order denying reconsideration to the extent it clarified the November 6 order.”)

In other words, for this Court to consider arguments and documents entered post-judgment, it must be properly part of the record on appeal. The various documents included in Respondents' appendices are not properly part of the record on appeal because the documents were filed after the notice of appeals and were never considered by the District Court in reaching the appealed orders.

Accordingly, the documents within the Respondent's appendices should be stricken.

D. GOOD CAUSE EXISTS TO STAY BRIEFING AND EXTEND THE DEADLINE FOR LVMPD'S ANSWERING/REPLY BRIEF.

Good cause exists to stay briefing and extend the deadline for LVMPD's answering/reply brief. The Court should also stay briefing and allow LVMPD a 30-day extension of time from the date of this Court's order resolving the LVMPD's motion to strike. Should the Court deny LVMPD's Motion, LVMPD will have to process and respond to several additional volumes of appendices in its answering/reply brief. Therefore, the Court should also allow LVMPD's requested 30-day extension for its answering/reply brief.

III. CONCLUSION

Based on the foregoing, LVMPD requests that this Court grant its Motion, striking the additional volumes of appendices and allow LVMPD's requested 30-day extension for its answering/reply brief.

Dated this 22nd day of January, 2019.

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CERTIFICATE OF SERVICE

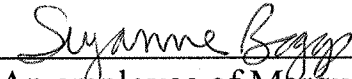
I hereby certify that the foregoing **APPELLANT'S REPLY IN SUPPORT OF ITS MOTION TO STRIKE RESPONDENTS' APPENDICES AND MOTION TO STAY BRIEFING** was filed electronically with the Nevada Supreme Court on the 22nd day of January, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

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An employee of Marquis Aurbach Coffing